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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 BOARD OF TRUSTEES OF THE
9 LABORERS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA, *et al.*,

No. C-06-6915 CW (EMC)

Plaintiffs,

ORDER RE SUPPLEMENTAL BRIEFING AND EVIDENCE

V.

CLARK ARNOLD CORP., et al.,

Defendants.

16 Plaintiffs' motion for default judgment has been referred to the undersigned for a report and
17 recommendation. Having reviewed the papers submitted by Plaintiffs, the Court hereby orders that
18 Plaintiffs provide supplemental briefing and evidence as follows.

- 19 (1) In their motion, Plaintiffs claim that there is \$22,337.19 in unpaid contributions. However,
20 Plaintiffs appear to have made an error in their calculations. Based on the papers submitted
21 by Plaintiffs, in February 2006, unpaid contributions for the pension trust fund totaled
22 \$1,393.84, not \$1,443.84. In light of this error, the Court hereby orders Plaintiffs to
23 recalculate the interest owed on the unpaid contributions.

24 (2) Plaintiffs have asked for interest both for unpaid contributions and for contributions that
25 were untimely made. While Plaintiffs have explained the methodology used to calculate
26 interest, they have not provided the Court with sufficient information to determine whether
27 Plaintiffs' interest calculations are correct. For example, for unpaid contributions, Plaintiffs
28 have provided information as to the dates that partial payments were made for the January

United States District Court
For the Northern District of California

1 2006 contribution, *see* Hagan Decl. ¶ 21, but have not provided information as to the dates
2 that partial payments were made for the remaining monthly contributions (*e.g.*, February,
3 March, and May 2006). Similarly, for paid but untimely contributions, Plaintiffs have
4 provided information as to the date that payment was made for the November 2005
5 contribution, *see id.* ¶ 23, but have not provided information as to the dates that payments
6 were made for the remaining monthly contributions (*e.g.*, December 2005 and February-June
7 2006). Plaintiffs are ordered to provide the missing information and show calculations for
8 interest.

- 9 (3) For June 2006, Plaintiffs claim that Clark Arnold failed to make the monthly contribution
10 and at the same time made an untimely payment. *See id.* ¶¶ 19, 23. However, the papers
11 submitted by Plaintiffs do not show any payment, or even a partial payment, by Clark Arnold
12 for June 2006. *See id.*, Ex. I. Plaintiffs are ordered to clarify this matter.
- 13 (4) As noted above, Plaintiffs have asked for interest for unpaid contributions as well as for
14 contributions that were untimely made. Similarly, Plaintiffs have asked for liquidated
15 damages for unpaid contributions, plus for contributions that were untimely made. For some
16 months, there appear to have been *both* unpaid contributions *and* paid but untimely
17 contributions -- *i.e.*, February, March, May, and June 2006. In other words, for some
18 months, a partial, late payment was made. For these months, it seems reasonable for
19 Plaintiffs to be awarded interest for the unpaid portion as well as interest for the paid portion
20 that was late. However, it is not clear why Plaintiffs should be awarded liquidated damages
21 for the unpaid portion (\$150 per month), plus additional liquidated damages for the paid
22 portion that was late (another \$150 per month). The Master Agreement simply provides for
23 liquidated damages for a delinquency. *See id.*, Ex. G (Master Agreement) ("Subject to
24 accounting verification, liquidated damages shall be assessed on delinquent contributions at a
25 flat rate of one hundred and fifty dollars (\$150.00) per month to reflect the internal
26 administrative costs incurred by the trust administrators in monitoring and tracking such late
27 contributions."). Plaintiffs are ordered to justify their claim for "double" liquidated damages
28 for these months.

1 Plaintiffs shall provide the supplemental briefing and evidence within two weeks of the
2 issuance of this order.

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4 IT IS SO ORDERED.
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6 Dated: March 28, 2007
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8 EDWARD M. CHEN
United States Magistrate Judge